

**OFFICE OF THE
ATTORNEY GENERAL**

DON SIGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 261-7400



STATE OF ALABAMA
FEB 17 1989

89-00187

RE: QUESTION 1 -- SEE
CODE OF ALABAMA 1975,
§ 11-98-5(i)(4) WHICH
WAS ADDED BY AMENDMENT
IN 1992 BY ACT NO.
92-562.

OVERRULED BY AMENDMENT TO
SECTION 11-98-5

Honorable Tom Butler
House of Representatives
136 Hartington Drive
Madison, Alabama 35758

Utilities - Emergency Management
Communications District -
Telephones

Funds derived from the emergency
telephone service charge
authorized by Section 11-98-5,
Code of Alabama 1975, may not be
used to pay for erecting a new
building.

E-911 Boards may not charge
residents and businesses
different percent rates.

E-911 Boards cannot arbitrarily
raise the per month rates.

Dear Mr. Butler:

This opinion is written in response to your request for an
opinion from the Attorney General.

QUESTION 1

UNDER THE E-911 ACT, CAN AN E-911 BOARD SPEND
MONEY FOR A NEW BUILDING?

FACTS AND ANALYSIS

The E-911 funds, are derived from the emergency telephone
service charge authorized by §11-98-5, Code of Alabama 1975. The
purpose of this Act as stated in the preamble and in §11-98-3 of
the Code, is to establish an emergency telephone service in the
county. This is done by creating a communications district

governed by a board of commissioners (which may be the governing body of the county or municipality which creates the district). We have previously considered the spending authority of the commission in opinions to the Honorable Jim Corley, dated October 2, 1987, Attorney General No. 88-00004 and the Honorable H. R. Burnham, dated September 22, 1988, Attorney General No. 88-00462. The commission has, pursuant to § 11-98-4(d) "... authority to employ such employees ... as it may deem necessary to assist [it] in the discharge of its responsibilities to the extent that funds are available." However, we do not find authority for the commission to expend its funds except for the purposes set forth in the Act: the provision of an emergency telephone notification service through the use of the number 911 as an access number. There does not appear to be any authority in the statute that would support expenditure of the district's funds for a new building.

CONCLUSION

It is the opinion of this office that given its purpose, and the lack of additional authority in the Act, the Board cannot expend monies generated through the emergency telephone service charge to erect a new building.

QUESTION II

CAN THE E-911 BOARD, UNDER THE ACT, CHARGE
DIFFERENT PERCENT RATES TO RESIDENTS FROM
WHAT IT CHARGES BUSINESSES?

FACTS AND ANALYSIS

The charges which may be levied to support an E-911 service are set forth in § 11-98-5. In subsection (a) of that section we find the following language:

"Any such service charge shall have uniform application and shall be imposed throughout the entirety of the district to the greatest extent possible in conformity with availability of such service in any area of the district."

In subsection (c) we find:

Honorable Tom Butler

Page 3

"No such service charge shall be imposed upon more than 100 exchange access facilities per person per location."

Thus, except as limited by the last quoted clause, the charge must be uniform.

CONCLUSION

It is the opinion of this office that in view of the language of the statute quoted above an E-911 Board does not have the authority to charge residents and businesses different rates.

QUESTION III

CAN THE E-911 BOARD ARBITRARILY RAISE THE PER MONTH RATE AT ANY TIME?

FACTS AND ANALYSIS

Under the provisions of § 11-98-5, the charge for E-911 service can be authorized to be an amount "not to exceed five percent of the tariff rate." If the charge levied generates more money than necessary to fund the district:

"... the board of commissioners shall, by ordinance, reduce the service charge rate to an amount adequate to fund the district. In lieu of reducing the service charge rate, the board of commissioners may suspend such service charge, if the revenues generated therefrom exceed the district's needs." (emphasis supplied.)

Section 11-98-5(b) goes on to provide that:

"The board of commissioners may, by ordinance, reestablish the original emergency telephone service charge rate, or lift the suspension thereof, if the amount of moneys generated is not adequate to fund the district."

Honorable Tom Butler
Page 4

Thus, the board may raise the levy only if it had previously reduced it, and in no event can the levy exceed the original rate authorized by the election provided for in § 11-98-3(a). Furthermore, the rate can never exceed the statutory maximum of 5% of the tariff rate.

CONCLUSION

It is the opinion of this office that an E-911 Board cannot arbitrarily raise rates. Section 11-98-5 sets forth how and when the rates may be raised.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
BY:



PHILIP C. DAVIS
Assistant Attorney General

DS/PCD/dn

0239N